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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

EVOX PRODUCTIONS LLC, a
Delaware limited liability company,

Plaintiff,

v

KAYAK SOFTWARE
CORPORATION, a Delaware
corporation; and DOES 1-10,

Defendants.

Case No. CV15-05053-PSG (AGR)

**DECLARATION OF CRAIG H.
BESSENGER IN SUPPORT OF
PLAINTIFF AND COUNTER-
DEFENDANT EVOX
PRODUCTIONS, LLC'S
OPPOSITION TO DEFENDANT
AND COUNTERCLAIMANT
KAYAK SOFTWARE
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

The Honorable Philip S. Gutierrez

Date: January 9, 2017
Time: 1:30 p.m.
Crtrm.: 6A

Trial Date: January 31, 2017

**KAYAK SOFTWARE
CORPORATION, a Delaware
corporation,**

Counterclaimant,

V.

EVOX PRODUCTIONS LLC, a
Delaware limited liability company,

Counterdefendant.

1 I, CRAIG H. BESSINGER, declare and state as follows:

2 1. I am an attorney admitted to practice in the State of California and a
3 member of the bar of this Court. I am an attorney at Caldwell Leslie & Proctor, PC,
4 counsel for EVOX Productions, LLC (“EVOX”). I submit this declaration in
5 support of EVOX’s Opposition to Kayak Software Corporation’s (“Kayak”) Motion
6 For Summary Judgment. I have personal knowledge of the facts stated herein, and
7 could and would testify competently thereto if called as a witness in this matter.

8 2. Attached hereto as Exhibit “C” is a true and correct copy of EVOX’s
9 Response to Defendant and Counterclaimant Kayak Software Corporation’s First
10 Set of Interrogatories.

11 3. Attached hereto as Exhibit “D” is a true and correct copy of EVOX’s
12 Fourth Amended Response to Defendant and Counterclaimant Kayak Software
13 Corporation’s First Set of Interrogatories.

14 4. Attached hereto as Exhibit “E” is a true and correct copy of excerpts of
15 the transcript of the August 9, 2016 deposition of Michael Magat.

16 5. Attached hereto as Exhibit “F” is a true and correct copy of excerpts of
17 the transcript of the August 8, 2016 deposition of Brad Schultz.

18 6. Attached hereto as Exhibit “G” is a true and correct copy of the EVOX
19 Automotive Image Library Wiki, produced by EVOX in this matter and marked as
20 Exhibit 10 during the August 8, 2016 deposition of Brad Schultz.

21 7. Attached hereto as Exhibit “H” is a true and correct copy of the EVOX
22 Automotive Image Library: Spin Photography Process Wiki, produced by EVOX in
23 this matter and marked as Exhibit 10a during the August 8, 2016 deposition of Brad
24 Schultz.

25 8. Attached hereto as Exhibit “I” is a true and correct copy of the EVOX
26 Automotive Image Library: Post Production Wiki, produced by EVOX in this matter
27 and marked as Exhibit 11 during the August 8, 2016 deposition of Brad Schultz.

28

1 9. Attached hereto as Exhibit "J" is a true and correct copy of excerpts of
2 the transcript of the August 10, 2016 deposition of Barry Thompson.

3 10. Attached hereto as Exhibit "K" is a true and correct copy of excerpts of
4 the transcript of the August 17, 2016 deposition of Lincoln D. Jackson.

5 11. Attached hereto as Exhibit "L" is a true and correct copy of excerpts of
6 the transcript of the June 1, 2016 deposition of Timothy Knowling.

7 12. Attached hereto as Exhibit "M" is a true and correct copy of excerpts of
8 the transcript of the July 27, 2016 deposition of Travis Gebhardt.

9 13. Attached hereto as Exhibit "N" is a true and correct copy of excerpts of
10 the transcript of the July 27, 2016 deposition of Lauren Fulton.

11 14. Attached hereto as Exhibit "O" is a true and correct copy of an email
12 chain with the subject "Recap and Intro to Subscription Licensing," which was
13 marked as Exhibit 3 during the July 27, 2016 Deposition of Lauren Fulton. Ms.
14 Addison authenticated this email at 28:5-30:2.

15 15. Attached hereto as Exhibit "P" is a true and correct copy of an email
16 chain with the subject "Evox NADA special through 1.31.14," which was marked as
17 Exhibit 4 during the July 27, 2016 Deposition of Lauren Fulton. Ms. Fulton
18 authenticated this email at 43:17-44:2.

19 16. Attached hereto as Exhibit "Q" is a true and correct copy of an email
20 chain with the subject "KAYAK Monthly Page View Report," which was marked as
21 Exhibit 14 during the July 27, 2016 Deposition of Lauren Fulton.

22 17. Attached hereto as Exhibit "R" is a true and correct copy of an email
23 chain between Lauren Fulton and John Brosnan, who was formerly employed by
24 EVOX, with the subject line "Evox," and the attachment to the final email in the
25 chain. This email chain and the attachment was marked as Exhibit 20 during the
26 July 27, 2016 deposition of Lauren Fulton. Ms. Fulton authenticated this email at
27 139:9-140:4.

28

1 18. Attached hereto as Exhibit "S" is a true and correct copy of a chart
2 listing unique page views for KAYAK between May 8, 2014 and May 31, 2014
3 ("UPV Chart"), which was marked as Exhibit 24 during the July 27, 2016
4 Deposition of Lauren Fulton. Ms. Fulton authenticated this email at 144:10-
5 145:21).

6 19. Attached hereto as Exhibit "T" is a true and correct copy of an email
7 chain with the subject "Evox Inv# 12191," and Bates number KAYAK0001342,
8 which was produced by KAYAK in the course of discovery.

9 20. Attached hereto as Exhibit "U" is a true and correct copy of an
10 attachment to the email chain with the subject "Evox Inv# 12191" and Bates number
11 KAYAK0001347, which was produced by KAYAK in the course of discovery.

12 21. On May 24, 2016, Kayak filed a Motion to Compel Discovery
13 Responses from EVOX. In connection with this motion, Kayak filed a joint
14 stipulation completed by Kayak and EVOX addressing the Parties' discovery
15 disputes. In this joint stipulation, Kayak argued that EVOX should be required to
16 supplement its response to Kayak's Interrogatory No. 2 to identify the original
17 elements of each of the then 952 photos at issue in the case. EVOX responded that
18 providing this information for hundreds of photos would be needlessly and
19 unreasonably duplicative. Attached hereto as Exhibit "V" is a true and correct copy
20 of the Local Rule 37-2 Joint Submission on Kayak Software Corporation's Motion
21 to Compel Discovery Responses, ECF No. 29-1.

22 22. On June 14, 2016, the Court, Magistrate Judge Alicia G. Rosenberg
23 presiding, granted in part and denied in part Kayak's Motion to Compel. With
24 respect to Interrogatory No. 2, the Court agreed that identifying the original
25 elements of each of the then 952 photos at issue would be needlessly and
26 unreasonably duplicative, and held that EVOX could select five example images
27 from the hundreds at issue and identify the original elements of those images. The
28 Court instructed Kayak that it could "renew its motion as to the other photographs

1 upon a showing that the five photographs are insufficient.” Attached hereto as
2 Exhibit “W” is a true and correct copy of Court’s Minute Order regarding Kayak’s
3 Motion to Compel, ECF No. 32.

4 23. Kayak never renewed its Motion to Compel as to this issue, nor has it
5 explained why EVOX's identification of the original elements in the five example
6 photographs was insufficient.

7 24. Attached hereto as Exhibit "X" is a true and correct copy of excerpts of
8 the transcript of the November 29, 2016 deposition of Gary Elsner.

9 25. Attached hereto as Exhibit "Y" is a true and correct copy of KAYAK's
10 Notice of Deposition of EVOX Productions LLC.

11 26. Attached hereto as Exhibit "Z" is a true and correct copy of a
12 spreadsheet produced by KAYAK in the course of discovery and marked as Exhibit
13 3 from Mr. Gebhardt's deposition. Mr. Gebhardt authenticates the spreadsheet
14 produced by KAYAK, excerpts of which were introduced as Exhibit 3 at 30:11-
15 31:23, 33:14-25. EVOX attaches only the excerpts here, in an effort to avoid further
16 burdening the Court with an additional voluminous exhibit. EVOX will lodge the
17 complete document at the Court's request.

18 27. Attached hereto as Exhibit "CC" is a true and correct copy of the
19 District Court's order granting summary judgment for EVOX in the matter of *EVOX*
20 *Productions LLC v. California Rent-a-Car, Inc.*, CV-15-0846-MWF (RAOx) (ECF.
21 No. 51) (C.D. Cal. July 26, 2016).

23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct.

25 Executed December 16, 2016, at Los Angeles, California.

Los Angeles, California.

CRAIG H. BESSEMER